

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH**

Criminal Revision No.3608 of 2016.

Decided on:-July 19, 2018.

Prem Singh.

.....Petitioner.

Versus

State of Haryana and others

.....Respondents.

CORAM: HON'BLE MR. JUSTICE HARI PAL VERMA.

Present:- Mr. Sharad Chaudhary, Advocate
for the petitioner.

Mr. Anmol Malik, AAG, Haryana.

Mr. K.D.S. Hooda, Advocate
for respondents No.2 to 6.

HARI PAL VERMA, J.

The petitioner-complainant has filed present revision petition against judgment dated 26.07.2016 passed by learned Additional Sessions Judge, Bhiwani whereby two appeals, one filed by respondents No.2 to 5-accused and the other filed by respondent No.6-accused against the judgment of conviction dated 20.11.2014 and order of sentence dated 21.11.2014 passed by learned Judicial Magistrate 1st Class, Bhiwani were dismissed and the conviction of the respondents-accused was maintained, but while invoking the provisions of the Probation of Offenders Act, 1958, they were released on probation of good conduct. The third appeal filed by the petitioner-complainant for enhancement of the sentence of imprisonment, was also dismissed.

Briefly stated, the FIR No.402 dated 21.10.2008 under Sections 323 and 325 read with Section 34 IPC was registered against the respondents No.2 to 6-accused, namely, Om Parkash, Satbir, Shankar, Sukram and Murti at Police Station Sadar Bhiwani with the allegations that on 13.10.2008 at about 07.30 P.M., when complainant Prem Singh (petitioner herein) reached his home and parked his car in front of his house, accused Om Parkash alias Omi came there and started abusing him. Thereafter, accused Satbir, Shankar and Sukram sons of Om Parkash also came there and started to abuse the complainant. When the complainant raised objection, accused Om Parkash caused injuries on his left elbow by iron rod. Accused Satbir gave fist blows on his mouth due to which he sustained a tooth injury. Thereafter, the accused caused injuries on his waist by iron pipe. Accused Sukram gave injuries with sharp edged weapon on his nose and eyes. Thereafter, accused Murti wife of Om Parkash also came there and gave injuries to him by stones. The complainant raised hue and cry on which Veerbhan and Arjun came at the spot and saved him from the clutches of accused. The complainant was got admitted in a hospital, where the concerned doctor found 6 injuries on his person and in the x-ray report, a fracture was also found.

After registration of the case, police investigated the matter and submitted Challan in the Court as provided under Section 173 Cr.P.C. The copies of Challan were supplied to the accused free of costs as envisaged under Section 207 Cr.P.C. Finding a prima-facie case under Sections 323 and 325 read with Section 34 IPC against the accused, they were charge-sheeted accordingly to which they did not plead guilty and claimed trial.

The trial Court vide judgment dated 20.11.2014 held the respondents No.2 to 6-accused guilty for commission of offence under Sections 323 and 325 read with Section 34 IPC. Vide separate order dated 21.11.2014 passed by learned trial Court, respondent No.6-accused Murti Devi was inflicted with compensation of Rs.20,000/- as envisaged under Section 357 Cr.PC for compensating the victim, whereas the remaining accused i.e. respondents No.2 to 5 were sentenced to undergo simple imprisonment for one year and fine of Rs.500/- under Section 323 IPC and simple imprisonment for three years and fine of Rs.2,000/- under Section 325 IPC. However, it was further ordered that the aforesaid sentences so awarded to the convicts shall run concurrently.

Against the judgment of conviction dated 20.11.2014 and order of sentence dated 21.11.2014 passed by learned Magistrate, the respondents No.2 to 5 filed an appeal before the Court of Session. A separate appeal was also filed by respondent No.6-accused Murti Devi. Another appeal for enhancement of the sentence was also filed by petitioner-complainant Prem Singh.

Vide judgment dated 26.07.2016 passed by learned Additional Sessions Judge, Bhiwani, the appeal filed by the respondents No.2 to 6 as well as the petitioner-complainant were dismissed. However, while maintaining the conviction of the respondents No.2 to 6, the order of sentence was modified and the respondents No.2 to 6-accused were released on probation on furnishing probation bonds in the sum of Rs.50,000/- with one surety in the like amount each. The appellate Court also held that the trial

Court has imposed a heavy compensation on accused Murti Devi to the tune of Rs.20,000/- and while taking a balanced view, the amount of compensation imposed by the trial Court upon petitioner-accused Murti Devi was modified. Accordingly, all the accused were directed to pay Rs.10,000/- each to injured-complainant Prem Singh. The accused were also directed to furnish the probation bonds before the trial Court within a period of one month along with compensation.

It is in these circumstances, the petitioner-complainant being dissatisfied has filed the present revision petition impugning the judgment dated 26.07.2016 passed by the appellate Court qua sentence part.

Learned counsel for the petitioner-complainant has argued that the trial Court has rightly convicted the respondents-accused and has passed the order of sentence. However, learned appellate Court has wrongly released the respondents-accused on probation. While releasing the respondents No.2 to 6-accused on probation, learned appellate Court has ignored the nature of injuries suffered by the petitioner-complainant.

He has further argued that the approach of learned appellate Court while releasing the respondents-accused on probation is illegal and perverse in view of the serious charges levelled against the respondents-accused. The petitioner had been brutally attacked by the respondents-accused and they had beaten him up with an iron rod and iron pipe. However, the appellate Court has failed to appreciate the facts and circumstances of the case as well as the evidence led by the prosecution while releasing the respondents-accused on probation.

On the other hand, learned counsel for respondents No.2 to 6 has argued that conviction of the respondents No.2 to 6 has been maintained by the appellate Court and looking into the totality of the circumstances as well as in the larger interest of justice, the appellate Court has released the respondents-accused on probation.

I have heard learned counsel for the parties.

While releasing the respondents-accused on probation, what might have weighed to the mind of learned appellate Court is that the parties have been residing in the same village and the respondents-accused are not previous convicts. Therefore, learned appellate Court, in its wisdom, has modified the sentence awarded by learned trial Court and released the respondents-accused on probation of good conduct by giving them benefit of Section 360 Cr.P.C.

It would be pertinent to mention here that scope of revisional jurisdiction is vested with limited powers. The record reveals that the prosecution has not proved that the respondents-accused are habitual offenders either before the trial Court or before the appellate Court. As such, the appellate Court has rightly accepted the prayer of respondents-accused for releasing them on probation of good conduct.

Moreover, quantum of sentence is always fixed by the Court and is a prerogative of the Court unless a minimum sentence is prescribed for an offence. Therefore, this Court does not find any illegality, irregularity or perversity in the impugned judgment passed by learned appellate Court which may warrant interference of this Court by invoking its revisional jurisdiction.

For the injuries suffered by the petitioner-complainant, learned appellate Court, vide impugned judgment dated 26.07.2016, has awarded compensation of Rs.50,000/- (Rs.10,000/- each by all the five respondents) to the petitioner. However, this Court is of the considered opinion that the said compensation awarded to the petitioner is inadequate viz. a viz. the injuries suffered by him. Therefore, respondents No.2 to 6-accused are directed to pay compensation to the petitioner-complainant to the tune of Rs.20,000/- each i.e. a total sum of Rs.1,00,000/- within one month from today.

With aforesaid modification in the impugned judgment dated 26.07.2016 passed by learned Additional Sessions Judge, Bhiwani, the present revision petition, is dismissed.

July 19, 2018
Yag Dutt

(HARI PAL VERMA)
JUDGE

Whether speaking/reasoned: Yes

Whether Reportable: No